

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Manchester, CT, Employer**

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**Docket No. 09-364
Issued: October 20, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2008 appellant filed a timely appeal from the January 25, 2008 decision of the Office of Workers' Compensation Programs finding that he failed to comply with vocational rehabilitation efforts. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office properly refused to reinstate appellant's compensation benefits due to his refusal to cooperate with vocational rehabilitation efforts, pursuant to 5 U.S.C. § 8113(b).

On appeal, appellant contends that he is entitled to compensation benefits from May 13, 2006 through March 10, 2008. He alleged that he had good cause for not participating in

vocational rehabilitation programs because the Department of Veterans Affairs (VA) found him to be 100 percent unemployable.¹

FACTUAL HISTORY

This is the second appeal before this Board. The facts and the law as set forth in the Board's prior decision are hereby incorporated by reference.² The relevant facts are set forth briefly below.

On August 1, 1983 appellant twisted his right foot when he stepped in a ditch while crossing the lawn. The Office accepted his claim for right foot sprain and congenital pes planus. By decision dated April 27, 2006, it reduced appellant's compensation benefits to zero effective May 14, 2006 due to his refusal to cooperate with vocational rehabilitation efforts.

Following the Board's August 21, 2007 decision, in a July 21, 1999 letter, the VA indicated that appellant had a service-connected disability rating of 60 percent and received an honorable discharge. Appellant's disabilities were listed as 40 percent spinal disc condition and 30 percent flat foot condition. In a July 12, 2005 letter from the VA to him, it certified that he was a wartime veteran who was 80 percent disabled with individual unemployability due to service-connected causes. In a June 14, 2007 decision, the VA found that appellant's service-connected disability rating continued.

By letter dated August 25, 2007, appellant requested vocational rehabilitation at the Office's earliest convenience. In a letter received by the Office on September 5, 2007, he indicated that vocational rehabilitation should look for work in the area of his residence, Columbia, South Carolina, and not Bridgeport, Connecticut, as he no longer lived there. Appellant requested back pay. On November 14, 2007 the Office referred appellant to vocational rehabilitation.

In a November 28, 2007 internal note, the claims examiner noted that appellant made a status inquiry as to his claim and left a cell phone number. She indicated that she dialed the number and got no ring or answer. The claims examiner stated that she wrote to appellant to get a proper number. On that day, appellant was referred to a rehabilitation counselor closer to the Columbia, South Carolina area where he resided. In a November 29, 2007 note, the claims examiner spoke with appellant and told him that she needed an accurate telephone number and that he had been assigned a new rehabilitation counselor, Sandra Atkinson. Appellant gave the claims examiner a new number which she would provide to the vocational counselor. On November 30, 2007 he informed the claims examiner that the VA had found him 100 percent disabled and that he was no longer suitable for rehabilitation. On December 19, 2007 the claims examiner indicated that appellant left a message inquiring about his compensation being

¹ Although appellant alleged that he is appealing a July 11, 2008 decision, no final decision was issued on that date. On that date a letter was sent to appellant's congressman noting that appellant's compensation payments were reinstated commencing March 10, 2008, when he began cooperating with the rehabilitation efforts. This letter was purely informational in nature and not a final Office decision from which appellant may properly file an appeal. *See e.g., Ernesto L. Montoya*, 35 ECAB 205 (1983); 20 C.F.R. § 10.126.

² Docket No. 07-300 (issued August 21, 2007).

reinstated, and gave a different call back number. The claims examiner returned the call, but each time it rang once and she was disconnected. She called appellant's former number and did not reach anyone. When the claims examiner called the new number again, she got a voice mail and left a message in response to his question.

In a December 20, 2007 note, the claims examiner explained that she had tried returning appellant's calls at numerous numbers that had been provided. Two numbers were not in service, one was not his number, and one was not receiving telephone calls. In a December 20, 2007 letter to appellant, the claims examiner advised that his compensation would be reinstated when vocational rehabilitation advised her that he was fully cooperating and showing good efforts in returning to work. She noted that this would only be after he had made efforts to cooperate fully, including being able to be reached by telephone. A December 27, 2007 Office note indicated that appellant moved residences and did not receive the December 20, 2007 letter. In a December 17, 2007 letter to a congressman, appellant contended that he had been compelled to temporarily relocate to Bridgeport, Connecticut for his children's support because the Office had erroneously terminated his benefits. In a December 31, 2007 letter, sent to appellant's address in South Carolina, the claims examiner noted that she had been unsuccessful in reaching him at the numbers provided.

In a January 8, 2008 initial report of vocational rehabilitation, the rehabilitation counselor noted that on December 28, 2007 she sent a letter to appellant at his South Carolina residence advising that she had attempted to reach him regarding an appointment to meet and discuss vocational rehabilitation. She would be in Columbia, SC on January 7, 2008 and would like to meet at 9:00 am. The vocational rehabilitation counselor asked him to contact her. A telephone log at the bottom of the report revealed that on December 28, 2007 the rehabilitation counselor tried to contact appellant by telephone but he did not answer. She again tried to call on January 4, 2008, but there was no answer and no way to leave a message. Appellant did not appear for the January 7, 2008 appointment. On January 8, 2008 the vocational rehabilitation counselor noted that her letter was returned with marking that appellant had moved. When she called the Office, she was told to close the file. By letter dated January 11, 2008, appellant informed the Office that he had moved to Bridgeport, Connecticut and provided his address.

On January 18, 2008 the vocational rehabilitation counselor tried to call appellant's cell phone and reached a Ms. Monterro. She left a message with her. On January 12, 2008 the vocational rehabilitation counselor called and reached Ms. Monterro again.

By decision dated January 25, 2008, the Office found that appellant had not shown good faith efforts in cooperating with vocational rehabilitation and had moved to another district. Reinstatement of compensation benefits was denied.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.³ Section 8113(b) of the Federal Employees' Compensation Act provides that, if an individual, without good cause,

³ *Betty F. Wade*, 37 ECAB 556, 565 (1986).

fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of the Act, the Office, after finding that in the absence of failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Office.⁴

Section 10.519 of Title 20 of the Code of Federal Regulations details the actions the Office will take when an employee without good cause fails or refuses to apply for, undergo, participate in or continue to participate in a vocational rehabilitation effort when so directed. Section 10.519(a) provides, in pertinent part:

“Where a suitable job has been identified, [the Office] will reduce the employee’s future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. [It] will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meetings with the [Office] nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of [the Office].”⁵

ANALYSIS

On August 27, 2007 this Board affirmed the Office’s decision reducing appellant’s benefits to zero due to his failure to cooperate with vocational rehabilitation. Appellant alleges that he is entitled to compensation beginning May 13, 2006. However, the Board finds that he failed to show good cause that he cooperated with vocational rehabilitation efforts. As stated by the Office’s regulations, a reduction in benefits will remain in effect until such time as the employee acts in good faith to comply with the direction of the Office.⁶ Although appellant indicated in an August 25, 2007 letter that he wanted to start vocational rehabilitation, his subsequent conduct is contrary to a good faith effort to work with the Office. The record establishes that he failed to cooperate with vocational rehabilitation counseling efforts. The telephone numbers appellant provided the Office, including cell phone numbers, did not allow it to leave a message, were disconnected or were inaccurate. On November 29, 2007 the Office advised that he was assigned a new counselor closer to his Columbia, South Carolina address. This counselor was also unable to reach appellant by telephone. A letter she sent to his South Carolina address with regard to an appointment was returned as undeliverable. Thereafter, in a letter dated December 17, 2007 to a Connecticut congressman, a copy of which was received by the Office on December 28, 2007, appellant indicated that he had relocated to Bridgeport, Connecticut, the city in which he initially resided when the Office first attempted vocational

⁴ 5 U.S.C. § 8113(b).

⁵ 20 C.F.R. § 10.519(a).

⁶ *Id.*

rehabilitation efforts. The Office did not have notice of this move and continued to try to reach appellant in South Carolina.

Appellant contends that he had good cause to not cooperate with vocational rehabilitation efforts as the VA found him to be 100 percent unemployable. However, it is well established that decisions of other agencies or governmental bodies are not dispositive to issues raised under the Act.⁷ Decisions made by such tribunals are pursuant to different statutes which have varying standards for establishing disability and eligibility for benefits.

The Board finds that the Office properly determined that appellant was uncooperative in vocational rehabilitation efforts without good cause.

CONCLUSION

The Board finds that the Office properly refused to reinstate appellant's compensation benefits due to his refusal to cooperate with vocational rehabilitation efforts pursuant to 5 U.S.C. § 8113(d).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2008 is affirmed.

Issued: October 20, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *Andrew Fullman*, 57 ECAB 574 (2006); *Wayne E. Boyd*, 49 ECAB 2002 (1997).